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IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

24 FEB 2004

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Vega Wave Systems, Inc.

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Serial No. 76302336

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John F. Letchford for Vega Wave Systems, Inc.

M. Catherine Faint, Trademark Examining Attorney, Law  
Office 103 (Michael Hamilton, Managing Attorney).

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Before Simms, Hanak and Rogers, Administrative Trademark  
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Vega Wave Systems, Inc. (applicant) seeks to register  
VEGA WAVE SYSTEMS in the form shown below for the following  
goods and services: components and equipment used in  
optical communications systems, namely, optical  
transmitters, optical receivers, optical modulators,  
optical switches, integrated optical circuits and systems,  
components and equipment used in wireless communications  
systems, namely transistors and integrated circuits for  
radio-frequency amplifiers, oscillators, filters, mixers,  
transmitters, receivers (International Class 9),  
manufacture of optical and wireless communications



components and equipment to the specifications and orders of others (International Class 40) and design of optical and wireless communications components and equipment for others (International Class 42).

The intent-to-use application was filed on August 21, 2001. During the course of the examination process, the Examining Attorney stated that the term "wave systems" is merely descriptive of applicant's goods and services and must be disclaimed. In response, applicant disclaimed the exclusive right to use WAVE SYSTEMS apart from the mark in its entirety.

Citing Section 2(d) of the Trademark Act, the Examining Attorney has refused registration on the basis that applicant's mark, as applied to applicant's goods and services, is likely to cause confusion with the mark VEGA, previously registered in typed drawing form for "electrical communication and control equipment, namely, transmitters,



receivers, signaling boards, dual tone multi frequency encoders and filters." Registration No. 1,518,679. When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key, although not exclusive, considerations are the similarities of the marks and the similarities of the goods and services. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [and services] and differences in the marks").

Considering first the marks, we note at the outset that we are obligated to compare the marks "in their entirety." In re National Data Corp., 753 F.2d 1056, 224 USPQ 749, 750 (Fed. Cir. 1985). However, in comparing the marks in their entirety, it is completely appropriate to give less weight to a portion of a mark that is merely descriptive of the relevant goods and services. National Data, 224 USPQ at 751 ("That a particular feature is descriptive ... with respect to the relevant goods or services is one commonly accepted rationale for giving less weight to a portion of the mark"). As previously noted,



applicant has conceded that the WAVE SYSTEMS portion of its mark is merely descriptive of its goods and services.

Thus, applicant has appropriated the cited mark (VEGA) in its entirety and merely added to this arbitrary mark VEGA the descriptive terminology WAVE SYSTEMS. It has long been held that one may not appropriate the entire mark of another and escape liability by the addition thereto of merely descriptive or even highly suggestive terminology. Bellbrook Dairies v. Hawthorn-Mellody Dairy, 253 F.2d 431, 117 USPQ 213, 214 (CCPA 1958) and cases cited therein. Thus, the first Dupont "factor weighs heavily against applicant" because the only arbitrary portion of applicant's mark is identical to the registered mark. In re Martin's Famous Pastry Shoppe, Inc., 748 F.2d 1565, 223 USPQ 289, 1290 (Fed. Cir. 1984).

Turning to a consideration of applicant's goods and services and the goods of the cited registration, we note that because the only arbitrary portion of both marks is identical, the contemporaneous use of the two marks can lead to the assumption that there is a common source "even when [the] goods or services are not competitive or intrinsically related." In re Shell Oil Co., 922 F.2d 1204, 26 USPQ2d 1687, 1689 (Fed. Cir. 1993). However, in this case we find that certain of applicant's goods and





services are closely related to certain of the goods of the cited registration.

To elaborate, applicant's Class 9 goods include "components and equipment used in wireless communications systems, namely ... filters ... transmitters." The goods of the cited registration include "electrical communication and control equipment, namely, transmitters ... and filters." While the word "wireless" does not appear in the recitation of goods of the cited registration, this simply means that the goods of the cited registration are broad enough to include both wireless and hard wire "electrical communication and control equipment, namely, transmitters ... and filters." Thus, as described in applicant's Class 9 application and the cited registration, the goods are, in part, legally identical.

Turning to a consideration of applicant's Class 40 and Class 42 services, we note that these involve the manufacture and design of, among other things, "wireless communications components and equipment" either to the specifications and orders of others, or for others. Obviously, the term "wireless communications components and equipment" is extremely broad and can encompass at least certain of the goods of the cited registration, such as

"electrical communication and control equipment, namely, transmitters, receivers" and the like.

In short, given the fact that applicant has adopted registrant's entirely arbitrary mark (VEGA) in its entirety and merely added to it descriptive terminology, and the additional fact that applicant has chosen to use its mark on goods and services which are either legally identical (Class 9) or extremely similar (Class 40 and Class 42) to registrant's goods, we find that there exists a likelihood of confusion. In other words, a consumer familiar with registrant's VEGA electrical communications equipment including transmitters and receivers would, in our judgment, assume that applicant's wireless communication systems (Class 9) emanate from a common source. This is particularly true when one recognizes that an ordinary consumer could purchase these legally identical products.

With regard to applicant's Class 40 and Class 42 services, we simply do not share applicant's totally unsupported contention that the only purchasers of these services are "sophisticated." (Applicant's brief pages 6-7). While it is true that a sophisticated purchaser could engage applicant to manufacture and design wireless communications components and equipment, we find that an ordinary consumer could likewise engage applicant to

manufacture and design wireless communications components and equipment. There is nothing in applicant's identification of services in either Class 40 or Class 42 that restricts the "wireless communications components and equipment" to either commercial or expensive components and equipment. Ordinary consumers can seek out companies to design and manufacture wireless communications equipment even if such design and manufacture involves simply taking preexisting equipment and putting it together in unique fashion to meet the particular needs of these ordinary consumers. Of course, to the extent that there are any doubts on the issue of likelihood of confusion, we are obligated to resolve such doubts in favor of the registrant. In re Hyper Shoppes, Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988).

Decision: The refusals to register are affirmed as to applicant's Class 9 goods, Class 40 services and Class 42 services.